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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,046	09/20/2003	Sunil K. Nagarajrao	SJO920030012US1	6579
44190	7590	03/18/2008		
WALTER W. DUFT LAW OFFICES OF WALTER W. DUFT 8616 MAIN ST SUITE 2 WILLIAMSVILLE, NY 14221			EXAMINER CHEA, PHILIP J	
			ART UNIT 2153	PAPER NUMBER
			MAIL DATE 03/18/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/666,046	<b>Applicant(s)</b> NAGARAJRAO ET AL.	
	<b>Examiner</b> PHILIP J. CHEA	<b>Art Unit</b> 2153	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 December 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This Office Action is in response to an Amendment filed 12/3/07. Claims 1-5,17 are currently pending claims 6-16,18-20 are withdrawn from consideration. In regards to Applicants inquiry of the status of claims 19 and 20, the Examiner places claims 19 and 20 into Group II with claims 6-11 and 18 and are therefore withdrawn from consideration. Any rejection not set forth below has been overcome by the current Amendment.

#### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-5 and 17 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As per claim 1, it is not clear from the specification that a node is only designed to be hardware. It is possible that one of ordinary skill in the art would interpret a node to be software or a module that behaves like a node.

As per claim 17, The language of the claim raises a question as to whether the claim is directed merely to an abstract idea that is not tied to a technological art, environment or machine which would result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101. An agent is considered software per se. Therefore it does not fall under one of the statutory categories.

Any rejection not specifically mentioned is rejected by virtue of being dependent on a rejected claim.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 2153

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-5,17 are rejected under 35 U.S.C. 102(e) as being anticipated by Matheny et al. (US 2002/0161883), herein referred to as Matheny.

As per claim 1, Matheny discloses a network management system for discovering information about a network, as claimed, comprising:

a plurality of nodes (see Fig. 1 [110], *showing a plurality of network devices (i.e. nodes)*);

plural discovery agents on said nodes adapted to discover information concerning said network (see paragraph 8, *describing a number of discovery agents to perform a coordinated network discovery for network [100]*);

each of said discovery agents having an associated discovery capability (see paragraph 17, *describing how the agents have capabilities such as attributes of the agents, calls that the agents supports that are defined in a capability matrix, and different discovery agents may perform discovery operations using different techniques, and may collect different types of data (see paragraph 11)*);

each of said discovery agents having an associated discovery assignment (see paragraph 19, *describing how a discovery operation is initiated by a network manager wherein the request may include requested data types and designate an address range or subnets for discovery and the discovery request may be compared to the available capabilities defined by the capability matrix for the agent*); and

collectively, said agent discovery assignments being a subset of said agent discovery capabilities (see paragraph 19, *since the request includes an assignment that is compared to the available capabilities, it is implied that the assignment may not use the entire capability of the agent, for example the assignment may be to discover a certain range of addresses that is a subset of the range of addresses that the agent is capable of discovering*).

Art Unit: 2153

As per claim 2, Matheny discloses that collectively, said agent discovery capabilities are overlapping and said agent discovery assignments are substantially non-overlapping (see paragraph 19, *describing how more than one agent can be capable of performing the requested discovery request and given that more than one request can be made by a network manager, it is implied that the assignments requested by the network manager would not overlap, for example, one agent can be assigned a certain range of addresses, while another one can be assigned a different range of addresses*).

As per claim 3, Matheny further discloses that the agent discovery assignments are based on said discovery capabilities (see paragraph 19).

As per claim 4, Matheny further discloses that the agent discovery assignments reflect one or more data collection service registrations with said plurality discovery agents, agents cost to obtain network information, load balancing among said plural discovery agents, and assignment churn (see paragraph 17, *describing registration operation for registering agents for data collection*).

As per claim 5, Matheny further discloses that agent discovery assignments comprise one or both of inband and outband discovery assignments (see paragraph 11).

As per claim 17, Matheny discloses a network discovery agent for use in a data storage network, as claimed, comprising:

discovery capability logic determining and providing agent discovery capability information to a requestor, said agent discovery capability information being a subset of all discovery information obtainable by said agent (see paragraph 19, *describing a requestor (i.e. network manager) requesting a discovery request and checking the capability of agents that can satisfy the desired discovery request*); and

discovery query logic implementing discovery queries based on agent discovery assignment information determined from said capability information (see paragraph 19, *where the discovery queries are performed based on the agents that were qualified to perform the discovery*).

Art Unit: 2153

***Response to Arguments***

4. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHILIP J. CHEA whose telephone number is (571)272-3951. The examiner can normally be reached on M-F 6:30-4:00 (1st Friday Off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Burgess can be reached on 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Philip J Chea  
Examiner  
Art Unit 2153

PJC 3/3/08

/Kevin Bates/  
Examiner, Art Unit 2153